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# REVELATIONS OF A SENATE DOCUMENT.

BY SIDNEY WEBSTER.

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THE injunction of secrecy was removed by the Senate in February last from an interesting and instructive document<sup>1</sup> relating to the recent treaty with Spain, and containing copies of the first instructions given by the President to his representatives before their departure for Paris, and of the reports and instructions exchanged in the course of the negotiation.

The contents asked for by the Senate remained unrevealed to the public till ordered to be printed on February 27th, 1901. Reading the document in connection with the protocols of the conferences, and other papers previously transmitted with the treaty,<sup>2</sup> one has an insight into the difficulties and influences which controlled the result.

The disclosures in the two Senate documents have been supplemented by a volume of the Spanish Red Book, covering the same transaction.<sup>3</sup>

Had these documents been accessible when the treaty was first made public in the United States, it would have been received and debated by voters in a way very unlike that in which it has been received and debated. There were, no doubt, controlling reasons why the first instructions given by the President to his representatives at Paris, their reports to him and his subsequent instructions thereon, should not be made public before the treaty had been finally ratified and proclaimed; for, if the results of the Paris negotiation had been rejected by the Senate and new negotiations begun, either with or without a renewal of the war, the contents of the document ordered to be printed at the end of

<sup>1</sup>Senate Document, No. 143, 56th Congress, 2d Session.

<sup>2</sup>Senate Document, No. 63, Part I., 56th Congress, 3d Session.

<sup>3</sup>"Documentos presentados a la Cortes en la legislatura de 1898 por el Ministro de Estado (duque de Almodovar del Rio). Conferencia de Paris y Tratado de Pax de 10 Diciembre de 1898. Madrid, est. Topografico "Secciones de Rivadeneyra." Impresores de la Real Casa. Parco de San Vicente, num. 20, 1899," pp. 324.

February last might, in the possession of Spain, have been prejudicial to the United States.

In the President's first instructions to his representatives at Paris under his constitutional duty to conduct negotiations for a treaty of peace, he dwelt much (perhaps for their enlightenment) on "the unwelcome necessity of the war," on "the dictates of humanity," and on "high public and moral obligations." He repelled "designs of aggrandizement," and "ambitions of conquest." He condemned "an adventurous departure on untried paths." He urged on his agents at Paris "the same rule of conduct" in making peace as in accepting war. He said that the protocol was framed on those considerations, that there must be "unqualified concession of its *precise* demands," and that he had "waived, for the time being, the requirement of a pecuniary indemnity from Spain, \* \* \* in the hope that Spain would thereby be enabled promptly to accept our terms; but, if the Spanish commissioners should, contrary to our just expectation, put forward and insist upon a claim for compensation for public property, you are instructed to put forward as counter-claim, a demand for indemnity for the cost of the war." No such claim was made by Spain.

Very pertinent to what the President then declared, is the reply made by Secretary Day, on July 30th, 1898, to the application by Spain to the President for the basis on which a political status could be established in Cuba, and the war terminated. He said that "the President, desirous of exhibiting signal generosity, will not now put forward any demand for pecuniary indemnity," but, nevertheless, he is not insensible of the cost of war, and, therefore, he must require in addition to abandoning Cuba, (1.) a cession by Spain of all her West India islands, (2.) an island in the Ladrones, and (3.) occupancy of Manila by the United States pending a treaty of peace which shall determine the "control, disposition and government of the Philippines." The capture of Manila came, it will be remembered, after the August protocol, and was in violation of it. Guam was selected by the President as the island in the Ladrones to be demanded under the second article of the protocol.

It was not contemplated by the President that the Spanish Commissioners would make a claim that either the United States, or the Islands, assume debts incurred by Spain, and,

therefore, no specific orders were given excepting in regard to immovable fixtures, public archives and muniments of titles.

Of the Philippines more was said: The August protocol had not distinctly stipulated that sovereignty over them was by the treaty to be ceded to the United States. The Commission was to determine only "the control, disposition and government of the Philippines." Spain asked in vain of the President to define those words. He refused to interpret or modify them. He declared to the French Minister, who represented Spain, that the fate of the Philippines had not been decided; that it would depend on the treaty. The Spaniards contended in Paris that the protocol did not require Spain to cede the Philippines; that it referred only to the internal régime of the Islands, which the Commission could prescribe under Spanish sovereignty. The first instructions by the President seem not to have anticipated that contention. The exordium of his demand for only Luzon was occupied with defensive reasons and explanations for requiring any of the group. He affirmed that the orders to Dewey had been given "without any original thought of complete or even partial acquisition," which may indicate that safety of our commerce in the Pacific, and American property on the coast, was the only motive; but yet he added that "the march of events rules and overrules human action," and we must meet and discharge the new duties and responsibilities according to "the high command and pledge of civilization." That was a plain reference to the unintended sequence of the war in behalf of Cuba, and to the by-product of an action begun with another object. Nevertheless, the President did finally come down to business, and mention "commercial opportunity to which American statesmanship cannot be indifferent," "American trade," and "an adequate commercial basis," as in "full accord with the just, moral and humane purpose which was invoked in our justification when accepting the war." Hence he required his commissioners to demand the island of Luzon! That was his interpretation of the protocol, as if it bound Spain to cede, and she was by it precluded from resisting, or discussing, the President's final decision of a matter which, in the previous August, he had affirmed had not been decided.

It has been general belief that the protocol and treaty were dictated to Spain by the President while she was under duress,

and that they were unresistingly signed by her, but the official documents<sup>1</sup> show that while that may be true of the protocol, it is not true of the treaty.

The fact that the protocol was forced on Spain by the President, without explanation of the meaning of his language in regard to the Philippines, proved inconvenient and costly for the American Commissioners in the negotiations, which, instead of running smoothly under American pressure, were twice nearly ruptured. What would have been the effect had the President definitely explained that the words "control, disposition and government" in the protocol meant a relinquishment by Spain of sovereignty over the Philippines, cannot be known till the secrets of the Spanish Foreign Office shall have been revealed; but the President could not then have been more candid, for the reason that the Republican leaders at Washington had not, in August, 1898, formulated their requirements in the archipelago.

The midnight intimation by one of the President's commissioners, Mr. Whitelaw Reid, to the Spanish Ambassador at Paris, and the conversation three or four days after the deadlock over the Cuban debt, as cabled to Washington by Mr. Day on October 27th,<sup>2</sup> reads like a page from a history of diplomatic finesse in the seventeenth century. The Spanish Ambassador having said to Mr. Reid that the Spanish commissioners could not then return to Madrid "if known to have accepted entire Cuban indebtedness," and if forced to answer immediately the American questions regarding "debt, must answer 'No,' and break off the conference," Mr. Reid replied that his countrymen were not "very eager" for the Philippines; that a preponderance of sentiment was in favor of taking all the archipelago, but an "influential minority did not go to that length," and, therefore, it was possible, but not probable, "that out of these conditions the Spanish commissioners might be able to find something, either in territory or debt, which might seem to their people at home like a concession." On the next day the Spanish Secretary of the Commission appealed to Mr. Day for liberal treatment in the Philippines, and said that no government at Madrid could surrender all and live, for such surrender, "without relief" would mean national bankruptcy. Mr. Day

<sup>1</sup>Senate Doc., No. 148, 56th Congress, 2d Sess., p. 36.

<sup>2</sup>Sen. Doc., No. 148, p. 36.

added in his cable that rupture of the negotiations was only averted "because Spaniards grasped at a hint thrown out in the conversation of Mr. Reid last night with Ambassador." That hint was payment in money for the Philippines!

The commission agreed to follow the order of topics in the August protocol. The Americans presented two articles for the treaty, regarding Cuba, Porto Rico and Guam, which were in effect the same as the two articles finally adopted. The Spaniards proposed amendments by which sovereignty over Cuba was to be transferred to the government of the United States, which was to accept it in order to deliver it to the Cubans, accompanied by debts which have been made a charge on the Cuban treasury. Had the Americans accepted sovereignty in trust, many things would be clearer in public law than now; but they rejected the amendment, refused to have anything to do with Cuban sovereignty, or Cuban debts, or Porto Rican debts, and the President approved.

After learned and forcible argument, the Spanish commissioners rejected the American counter-demand, and then intimated an acceptance of it provisionally, saying, however, "that strict law decides the question of the Cuban debt in their favor;" but yet they "are willing to modify the said strictness, in view of the advantages which Spain may derive from other stipulations of the treaty," and asking the Americans to formulate their Philippine requirements.

The stout contention by Spain in the matter of debts was unsound, for the reason that the question had been closed by the August protocol.

An effort to formulate Philippine requirements had disclosed serious differences among the President's five representatives at Paris, and Mr. Day sent to the Department of State a cable setting forth those conflicting opinions, the view of each Commissioner, and asking "explicit instructions."

Davis, Frye and Reid said that it would be a "naval, political and commercial mistake to divide the archipelago," as the President had ordered in his first instructions; and they asked for a widening of those instructions in that sense. Day could not consent to a peremptory demand of the entire archipelago. Gray did not deem it wise to take any of the islands. Neither Day, nor Gray, could find in the protocol ground on which to peremptorily

demand the Philippines. The text of the differing views is given on pages 32-5 of the Senate Document printed February 27th, 1901.

On the next day the Secretary of State cabled the President's reply, which was, in the opening sentence, almost a transcript of the first sentence in the cabled opinion of Davis, Frye and Reid. The President executed a *volte face*, and said that his first instruction, demanding only Luzon, "cannot be justified on political, commercial or humanitarian grounds," and he, therefore, must have the whole archipelago or none; but yet, he added, our motives must be such as "will exalt our nation." He was influenced in this latest instruction, continued Mr. Hay, "by the single consideration of duty and humanity," and he, therefore, left "largely with the Commission" the details of acquiring all of the Philippines—a responsibility which it is not probable the American Commissioners desired.

The President caused it to be cabled to Paris, on October 28th, that "the Philippines can be justly claimed by conquest, *which position must not be yielded*;" but, on November 3d, Day replied that "the majority of the Commissioners are clearly of the opinion that our demand for the Philippines cannot be based on conquest;" that, when the protocol was signed, Manila had not been captured; that "captures made after an agreement for armistice must be disregarded," and that "we can require cession of Philippine islands *only* as indemnity for losses and expenses of the war." Davis cabled his concurrence. Two days afterward, the President acquiesced in part, but said "conquest should not be ignored," while indemnity may be "the chief ground." We only seek, he added, a treaty "justified in the judgment of posterity." He confided to the Commission "the argument which shall result in such a consummation." It would seem that, in the opinion of the American Commissioners, the President and his Cabinet were stronger in the humanities than in international law.

Meanwhile, our Commissioners had, on October 31st, and after the President's order of three days before for the whole archipelago, presented to the Spaniards a proposal for the cession. It was peremptorily rejected and used as occasion for an elaborate argumentative protest against such a perversion of the August protocol, to which the Americans replied at great length on November 9th, and the sitting of that day was adjourned for three days. Our Commissioners, foreseeing, perhaps, that something else

besides arguments over the protocol must be employed to secure a treaty, immediately cabled again to the President, asking what money offer he was willing to make for the Philippines. Again each Commissioner cabled his view. Day "would minimize our holding to the lowest point consistent with our obligations," which he defined as Luzon and the islands essential by proximity. He added that we should not seek more than "a commercial and naval base in the East;" but, "as the President and Cabinet have determined to take whole group," he would offer a lump sum of fifteen millions and assume no debts anywhere. Frye would take the entire group, paying ten millions, which he thought a fair estimate of the debt properly chargeable to the Philippines. Reid would not recognize Philippine debt, but would pay twelve to fifteen millions, rather than lose a treaty and resume hostilities. Davis would not pay a dollar, and would stiffly stand on the ultimatum already presented to the Spaniards. Gray adhered to his former objections against acquiring any of the Philippines, but cabled in substance that a treaty of peace was "immensely important;" that the protocol required the fate of the Philippines "to be determined by a treaty" which the United States had no right to dictate, but must negotiate with Spain on equal terms; that if her free consent be not obtained, war would be resumed and conquest ruthlessly made. Therefore, he would be magnanimous to Spain, and faithfully execute the professions of disinterestedness with which the war was begun. He named no sum of money as payment.

On the next day came the President's reply, saying he would "regret deeply" a renewal of the war; that we were "clearly entitled to indemnity for cost of the war" (estimated not less than \$250,000,000), but Spain had no money, and both archipelagoes were not worth that cost. Nothing was said of "conquest." It had dropped out. He added that the trade and commercial side, as well as indemnity, "are questions we might yield," but not "questions of duty and humanity." We owed "an obligation to the people of the Philippines." Hence, "pay to Spain ten to twenty millions of dollars!"

In one of the American arguments against the Spanish contention at Paris, our Commissioners said:

"The Spanish Commissioners have, themselves, in an earlier stage of these negotiations, spoken of the Filipinos as our allies. This is



not a relation which the Government of the United States intended to establish, but it must at least be admitted that the insurgent chiefs returned and resumed their activity with the consent of our military and naval commanders, who permitted them to arm with weapons which we had captured from the Spaniards, and assured them of fair treatment and justice. Should we be justified in now surrendering these people to the justice of Spain, even under a promise of amnesty, which we know they would not accept?" (p. 210).

To those allies, presumably, the President referred, but within three months they, or many of them, were in armed revolt against the United States.

Two days after the President's cable of November 13th, his representatives informed him that they would offer twenty millions, and he approved. On the next day, the Spaniards made their second argument against cession of the Philippines, and, five days thereafter, the Americans responded by an offer of twenty millions, which, on the 28th, the President of the Spanish Commission, in a manly and rather pathetic speech (p. 213), accepted as "the only terms the United States offers for the concluding of the treaty of peace."

It is noteworthy that, on the day the American Commissioners cabled to Washington their differences regarding acquisition of the Philippines, and while the government of the United States was taking so much trouble to release the inhabitants of the group from the dominion of Spain, the revolutionary government of the Filipinos at Malolos, or members of it, were attempting to conspire with Spanish officers to exclude the United States, and plant "the flags of Spain and the Philippines side by side." A copy of the text of a captured letter to General Rios, the Spanish General in command at Iloilo, and its history, have been published.<sup>1</sup>

One of the yet unrevealed mysteries in the relation of the United States with the Philippines, is the career of Aguinaldo and the revolutionary government of the Filipinos at Malolos, of which he was President. Who he was, is now well known. His first direct association with the United States was at Singapore, on May 24th, 1898.<sup>2</sup> The American Consul General at that port informed our State Department that on the 23d of May he had heard from an Englishman, Mr. Bray, that Aguinaldo had arrived; that he, the Consul, requested an interview, which took

<sup>1</sup>"The Republican Campaign Text Book, 1900. Issued by Republican National Committee," pp. 63 and 339.

<sup>2</sup>Senate Doc., No. 62, Part I., 55th Congress, 3d Session, p. 341.

place on the next day in presence of Bray and Aguinaldo's "trusted advisers;" that he then learned that Aguinaldo was directing an insurrection in the Philippines, and he had persuaded Aguinaldo to co-operate with the American fleet then at Hongkong, which Aguinaldo endeavored to do. The American Consul-General at Hongkong sympathized with the scheme, but when the Department of State had been told what its Consuls had done, it sharply admonished them.<sup>1</sup> What went on between Admiral Dewey and Aguinaldo is not yet fully known by the public. It seems, however, clear enough that Aguinaldo and the United States were playing at cross purposes from the outset. He was seeking the independence of the Philippines from both Spain and the United States. President McKinley had not decided, till his Commissioners at Paris needed instructions, what he wished in the Philippines. As soon as Aguinaldo, his associates and followers, suspected, from what was going on at Paris, that the President did not intend to help the Filipinos to freedom and independence, they began more actively to intrigue against the United States, and, in the end, to fight. Aguinaldo made his plans to begin the struggle within two days after the President's order of December 21st, 1898, to occupy the whole archipelago, was promulgated at Manila. How many of the Filipinos really sympathized with Aguinaldo, no one as yet seems to know.

Before a student of the Philippines can touch bottom in all Aguinaldo did in the insurrections against Spain and the United States with which he had been concerned, it will be necessary for him to explore the relation of the monastic orders to secular priests in the archipelago, the political and pecuniary relation of the chiefs of the Philippine Dominicans, Franciscans and Augustinians to the Papal hierarchy at Rome, the relation of the latter to the government at Madrid, and, finally, the former relation through Rome and Madrid of the Provincials of the monastic orders in the archipelago, to any and every Spanish Governor-General sent thither, if he ventured to interfere with their prerogatives.

The penetrating student may then feel it necessary to go even further, and ascertain the relation to the treaty of Paris and its negotiations held by the superiors, at Rome and Manila, of the monastic orders in the Philippines, and the relation to the

<sup>1</sup>Senate Doc., No. 62, Part I., 55th Congress, 3d Session, pp. 340, 354.

United States government and its fundamental law, of the titles of houses,<sup>1</sup> lands, and the income thereof, controlled by members of the monastic orders who generally in the archipelago live in communities, and are not always obedient to the Roman Catholic Archbishop.

Only responsibility for debts of the relinquished, or ceded, islands had been disposed of by the Commission; details remained untouched. One of the most important of the undebated subsidiary questions was the relation to the United States of the inhabitants dwelling in the ceded islands. The government at Washington has been severely criticized at home and abroad because the treaty departed from the doctrines of the declaration of American independence in 1776 regarding "consent of the governed." That has been the tone of the anti-imperialists. Among the very last of the instructions cabled by the President to his Paris representatives was that of November 29th,<sup>2</sup> in which their opinion was asked regarding "citizenship of the inhabitants of the Philippines, which will prevent extension of that right to all Mongolians and others not actually subjects of Spain." The question seemed to contemplate American citizenship of all excepting those not Spanish subjects. He also asked if the American Commissioners deemed it advisable to provide for "recognition of uncivilized native tribes, in the same manner as in the Alaska treaty," and concluded by hinting the "leaving to Congress to deal with the status of inhabitants by legislative act."

The Americans, thereupon, proposed an article for the treaty, dividing all the inhabitants of Porto Rico and the Philippines into two classes—one class consisting of those born in Spain and Spanish subjects, and the second class including all other inhabitants born on the islands. The first class could remain, or remove, and remaining could preserve Spanish allegiance by certain formalities within one year, in default of which an adoption of "the nationality of the territory in which they may reside" would be assumed. Thus the first class were free to go or stop, but the second class, consisting chiefly of the natives, had not such stipulated freedom to remain or depart. Their political status was to be "determined by Congress." That American proposal finally became in substance article nine of the treaty.

<sup>1</sup>International Law Digest, Vol I., sec. 5a.

<sup>2</sup>Senate Document, No. 148, 56th Congress, 2d Session, p. 61.

The Spaniards assented to the two classes, and to the proposal regarding the first class, but dissented on various grounds from the American proposal regarding the second, preferring instead that the second class "shall have the right to choose the Spanish nationality within the period of one year," but without which their Spanish nationality "shall not at any time be recognized." The native was to be free, it will be seen, to choose Spanish nationality, but not any other. Nevertheless, it afforded to the native a way of indicating whether or not he wished to be possessed and governed by the United States. The reasons why the American Commissioners could not accept the Spanish proposal are set forth on page 262 of Senate Document No. 62. Their validity and force depend on the way in which Congress shall exercise its authority. Owing, as the President insists, to war begun against the United States by the Filipinos, Congress has not yet legislated to determine "the civil rights and political status" of the natives.

Of the treaty thus concluded at the end of more than two months of peremptory demand, of labor, anxiety, difficulties and perils, and by payment of a large sum of money, the President thus spoke at Youngstown, Ohio:<sup>1</sup>

"We are in the Philippines. Our flag is there; our boys in blue are there. They are there not for conquest, they are not there for dominion—they are there because, in the providence of God, who moves mysteriously, that great archipelago has been placed in the hands of the American people. When Dewey sank the ships at Manila, as he was ordered to do, it was not to capture the Philippines—it was to destroy the Spanish fleet, the fleet of the nation against which we were waging war, and we thought that the soonest way to end that war was to destroy the power of Spain to make war, and so we sent Dewey. And the islands came to us. It was no responsibility that we sought, but it was a responsibility put upon us!"

To the Home Market Club,<sup>2</sup> he said on February 16th, 1899:

"Our concern was not for territory, or trade, or empire, but for the people whose interest and destiny, without our willing it, had been placed in our hands. It was with this feeling that, from the first day to the last, not one word, or line, went from the Executive in Washington to our Peace Commissioners at Paris, that did not put as the sole purpose to be kept in mind first, after the success of our arms and the maintenance of our own honor, the welfare and happiness and the rights of the inhabitants of the Philippine Islands. \* \* \* We were obeying a higher moral obligation which rested on us and

<sup>1</sup>Republican Campaign Text Book, 1900.

<sup>2</sup>Ibid, p. 332.

which did not require anybody's consent. We were doing our duty by them, as God gave us the light to see our duty, with the consent of our own consciences and with the approval of civilization."

None of those who promoted the war to liberate Cuba foresaw, or intended, such a treaty of peace, or present difficulties with the Cubans, yet it is not easy to see how it can be accurately said that responsibility for governing the natives of all the ceded islands was in Paris thrust upon the government of the United States against its wish and will.

The first official act of the President was on December 21st, 1898, eleven days after the *project* of a treaty had been signed at Paris, and long before its ratification by the two governments, when he declared<sup>1</sup> that the sovereignty of the United States had been extended over the Philippines, and that the exercise of American control of the entire group would be immediately enforced, and that all persons will with firmness, but without undue severity, be brought within the rule of the United States. The theory of public law on which the President's order of December 21st was issued was, probably, that of conquest, which a majority of his representatives at Paris had discarded, and it was, as the result disclosed, an unfortunate blunder.

There was an incident in the negotiations at Paris bearing on it. The Americans having proposed that the United States should maintain public order over the whole archipelago, pending exchange of the ratifications, the Spaniards replied that the government at Madrid preferred that each nation "should be charged with the maintenance of order in the places where each might be established" (p. 229). Thereupon, the Americans did not insist on their proposal, but yet before the treaty had been ratified the President attempted to govern the whole archipelago.

The Senate document containing the cable messages exchanged between the President and his representatives at Paris is an answer to those, at home and abroad, who have criticized the government at Washington on the ground that war against Spain was not really begun only to release Cuba from the dominion of Spain, but with a fixed purpose to enlarge the area of the United States and its power to participate efficiently in the politics and commerce of China. Nevertheless, when the August protocol was signed, the President did, besides the liberation of Cuba, de-

<sup>1</sup>Republican Campaign Text Book, 1900; p. 335.

mand and obtain the cession of Porto Rico, of an island in the Ladrones, and the occupation of Manila as a guarantee that the treaty of peace "shall determine the control, disposition and government of the Philippines."

The fourth section of the Joint Resolution by Congress of April 20th, 1898, demanding that Spain "relinquish" its authority and government in Cuba, must be taken as conclusive evidence that sovereignty, exercised by the United States over that island, was not then intended. So far as concerned Congress and the President, the treaty of peace was, like evolution in the terms of Darwinian science, an unintended result. They who did, "with a monarch's voice, cry havoc and let slip the dogs of war," were those who produced an unintended sequence in Porto Rico and the Philippines, and also in Cuba, as we now discover.

It cannot be denied that the part of the law relating to Cuba, approved by the President on March 2d, 1901, "for the support of the Army," did change the previous law of April 20th, 1898, in a way to leave the Government of the United States exposed to criticism, on the ground that it modified the unselfish, generous and chivalrous attitude of three years before regarding the Cubans. Those who feel jealousy, or resentment, toward the United States, may go even so far as to say that the law which opened hostilities was enacted as a war stratagem to mislead foreign opinion and home opinion. The United States did affirm its intention not to exercise sovereignty, jurisdiction or control over Cuba, excepting for its pacification, and to leave to its people the control of the islands when pacified. Somewhat of sovereignty, jurisdiction and control was to be exercised, but how much was made dependent on the requirement of "pacification." Were Congress and the President, when enacting the first law in order of date, entirely under the influence of humanitarian and philanthropic emotions in behalf of the revolting Cubans, and especially the *reconcentrados*, which emotions were tinged by a wish to make generally acceptable a war in their interest?

Secretaries of State at Washington had, during three-quarters of a century, kept Cuba in mind.<sup>1</sup> For double reasons of defence of the island against Africanization by a European power and for our own military and naval security, each President had insisted that an island lying at our doorway in the Atlantic Ocean

<sup>1</sup>International Law Digest, Vol. I., § 60.

must not, if it passed out of the hands of Spain, be owned by a foreign government, but in 1898 Congress seemed, for the moment, to forget that Cuba after pacification was to be in the hands of itself—a power foreign to us. On the very day of the enactment of the law of that year, the President, when demanding from Spain that it at once “relinquish” its authority and government in Cuba and its waters, accompanied the demand with a declaration of the intention of the United States not to control the island excepting for its “pacification,” and of the determination of the United States to finally leave Cuba to its people, “under such free and independent government as they may establish.” That was unfortunately explicit!

Altruistic fervor in 1898 over Cuban subjects of Spain has produced results intended, and unintended, that are, in many aspects, anomalous in public law. The statute of that year began, in its first clause, by declaring that the Cuban people “are free and independent;” in the third clause it authorized the President to use the army and navy to make them free and independent; and, finally, in the fourth clause, asserted that, when the island had been pacified, its people must be free and independent.

When Spain urged at Paris that abandonment of Cuba might leave it a prey to anarchy, the American Commissioners appear, in the Senate documents now before us, as having promptly replied that the United States will assume all the obligations of international law flowing from occupation of the island. Something like that is in the first and sixteenth articles of the treaty, which, possibly, may have modified the fourth self-denying clause of the law of 1898.

Our Supreme Court has adjudged that Cuba is, as to the United States, a foreign country. Under the statute of 1898 and the protocol of that year, inhabitants of Cuba were not Spanish subjects; they had by Congress been declared “free and independent.” By those two public acts, and the treaty as well, the sovereignty of Cuba was left floating in mid-air.

What is the definition of the legal relation of the President and Congress to the island? Who is the sovereign, is a political and not a judicial question. The island is occupied and held by our army, but has Congress constitutional jurisdiction there where the United States is not the sovereign, nor are Cubans American citizens? Is Cuba a State with which the

United States can now make a treaty, or only a fictitious State? Perhaps it is a State *de jure*, but not *de facto*. The United States government now occupies Cuba in order to pacify it, but has Cuba no right to decide when the occupancy shall cease? Power to expel the occupant she certainly has not, whatever may be her right, and, besides, the exercise of that power would not tend to pacify the island. The condition of Cuba, under the law of 1898, the protocol and treaty, was novel and unique, but what has it come to be under the army law of March 2d, 1901, prescribing the eight conditions under which the President may withdraw the army and navy, and "*leave* the government and control of the island of Cuba to its people," as the fourth self-denying clause of the law of 1898 required? The law of the present year concedes to the Cubans nothing else than submission to the recently dictated conditions under which their island can be "free and independent." That is a sequence probably not contemplated by anybody in April, 1898; but, when the law of 1901 was enacted, the fervid emotions of three years before regarding Cubans had subsided, and returning reason had brought to Washington perception of the fact that, although Cuba is a foreign country, the military defense of the United States must be considered, as well as the welfare of Cubans.

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